

REMARKS

All currently pending claims 1-7 and 10-21 were rejected, by the Office Action dated 12/29/04, under 35 USC 102(b) as anticipated by Barnett et al., and under 35 USC 112, second paragraph, as being indefinite.

Rejection Under 35 USC 102(b) over Barnett et al. (US 6,494,674)

As was discussed during the interview, the present invention relates to an electrostatically-sprayable composition that is an emulsion comprising immiscible liquids that form a two-phase mixture of: (1) an insulating, external phase and (2) a conductive, internal phase.

Barnett et al. neither teaches nor suggests such a two-phase emulsion composition. Instead, the sum total of Barnett's teachings focuses on formulations which comprise a single phase. Such single-phase systems are made of miscible liquids and thus are essentially continuous with respect to their electrical resistivity and conductivity.

For example, Barnett et al. states, at 4:50-53 (emphasis added):

“Indeed, for use in the present invention the skin treatment agent(s) is preferably provided in the form of a composition comprising one or more solvents or diluents which solubilise or are soluble in or miscible with the skin treatment active.”

As is well known in the art, miscibility is the ability of two or more substances to mix to form a single homogeneous phase. An emulsion, on the other hand, is defined as a stable mixture of two or more immiscible liquids.

Claim 1 of the present invention, as amended in RCE filed on 10.28.04, recites that the topical emulsion composition is a two-phase composition that does not form electrical continuity between the insulating external phase and the conductive internal phase. This is not taught or suggested by Barnett et al.

As discussed at the interview, the novel composition of the present invention, which is a two-phase electrostatically-sprayable emulsion (as opposed to an electrically-continuous system), has a number of advantages over the prior art single-phase compositions.

For example, in a two-phase system, it is possible to utilize different levels of polar and non-polar soluble materials. Incorporation of non-polar materials in the external phase provides improved tactile sensation upon application and tends to reduce the irritation potential of volatile materials which may be incorporated into the internal phase. The non-polar external phase insulates such potentially irritating materials from the skin. (Specification, 2:15-25.)

Another advantage is related to a so-called "clustering" phenomenon, i.e., the ability of powder pigments to disperse in the external phase that causes the apparent droplet size (i.e., the droplet size perceived by the eye once the product has dried), to appear smaller than the actual droplet size which is sprayed. Such smaller apparent droplet sizes tend to provide better integration of the product with the bare skin, which leads to a more natural look. This ability to integrate with the skin also enables the use of broader range of shade palettes while maintaining a natural appearance of the skin. In contrast, when pigments are incorporated into essentially single-phase compositions, the pigments are generally evenly distributed throughout the sprayed droplets. When such compositions are sprayed, the apparent droplet size approximates the droplet size actually sprayed. (Specification, 2:26-3:7.)

At the Examiners' request, an exhibit entitled "Performance Benefits of Electrostatically Spraying Two Phase Systems Over Single Phase (Miscible) Systems" (2 sheets) is included herein as APPENDIX 1.

The Examiner is respectfully requested to reconsider the claims and withdraw the 35 USC 102(b) rejection.

Rejection Under 35 USC 112, Second Paragraph

Claims 1-7 and 10-21 were rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. More specifically, the Examiner took the position that internal phase over 50% and external phase under 50% contradicted the terms "internal" and "external" respectively.

This rejection is respectfully traversed. As was explained during the interview, the internal phase can comprise from 15% to 80%, and the external phase can comprise

from 5% to 75%. There is no contradiction in terms, for the relative proportions of internal and external phases are not limited by 50% border-line. For example, the text book COSMETICS by William C. Griffin, in the chapter entitled "Properties of Emulsions," provides the following teaching:

"Theoretically, the maximum volume that can be occupied by uniform spherical particles for the dispersed phase of an emulsion is 74% of the total volume. If the particles of the emulsion are not uniform in size, a more dense packing can be effected, and the dispersed phase may be greater than 74% of the total volume. Emulsion have been prepared that contain as high as 99% internal phase . . ." William C. Griffin, *Cosmetics*, Second Edition, Volume 3, page 576 (Emphasis added).

At the Examiner's request, photo-copies of three pages from the Griffin's *Cosmetics* are included herein as APPENDIX 2.

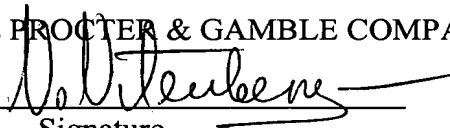
The Examiner is respectfully requested to withdraw the 35 USC 112(2) rejection.

As was agreed at the interview, the Examiner is respectfully requested to reconsider the claims and allow the application to issue.

Respectfully submitted,

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By



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